

March 14 1942

Mr. O.C. Williams,
State Land Commissioner
Capitol Annex
Phoenix, Arizona.

Dear Mr. Williams:

We have your letter of March 3, in which you state:

"This request for opinion covers the same questions and principals as involved in the La Osa Live Stock matter. The lands were held under grazing leases by the La Osa Live Stock Company and were changed to agricultural leases in the name of Eloy Development Company covering all or parts of Section 6, Township 10 South, Range 9 East, Section 30, Township 9 South, Range 9 East, and Section 10, Township 9 South, Range 9 East.

"The new agricultural lease on Section 6, dated March 1, 1941, calls for 328.63 acres on a sliding scale of \$1.50 per acre for the first year with an increase of 50% per acre for each year for a five year period. The objection raised by the Eloy Development Company is on the acreage listed and they submit the Federal Government report which shows a net of 163 acres. This Department charges on a gross acreage rather than net. My personal investigation on the ground showed that 175 acres should be charged for on the above stated rates. This lease has not yet been completed because of the above objections and the question herein involved is the one of our authority to revise this lease, after the lapse of one year since it should have been completed, and I wish to state that rental has already been paid on the entire acreage of 328.63 as there is only half a section involved. This payment was made under protest and they now ask that the lease be revised to meet the actual facts and that the amount overpaid be refunded or credited on future installments. I might add that all but 175 acres is in the Santa Cruz River and cannot be farmed.

"In section 30, Township 9 South, Range 9 East, an agricultural lease was issued April 1, 1940, on the basis of \$1.00 per acre for 120 acres and this was based upon the estimate they would plant that year. The Government records show that only 51 acres net were cultivated and my personal inspection of the land showed that we should charge on approximately 60 acres gross as that is the amount now cleared and under cultivation. The balance

42-270

O.C. Williams, - State Land Dept.

-2-

March 14 1942

of the section is still in the rough, never having been cleared or plowed. Through some unaccountable error, the new lease written April 1, 1941, showed a total of 631.64 acres in cultivation and this lease was written for a five year period on the graduated scale of \$1.50 per acre for the first year and 50% per acre per year increase during the life thereof. This lease was never completed although the Company paid the sum of \$1,069.43 in rental when informed that they must do so or lose their lease. They now ask refund of the amount overpaid above the 60 acres.

"In Section 10, Township 9 South, Range 9 East, the Company also paid a rental in the amount of \$1,083.60 while the Government report shows a new of only 225 acres. My own survey of the land indicated that we should charge on the basis of 235 acres gross. Reports that the entire section was in cultivation or would be were in error and were based upon the anticipated cultivation quoted by Mr. West from his Phoenix office. This was never realized as the land was not cleared nor is there any possibility that it will be soon. They, therefore, ask an adjustment upon this last lease also, which has never been completed, and a refund or credit for future rentals be given for the amount overpaid."

It is the opinion that if you found the facts to be as outlined in your letter, you may legally make adjustments on the leases in question.

Yours very truly,

JOE CONWAY
Attorney General

EARL ANDERSON
Special Assistant
Attorney General.

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